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IN THE

Supreme Court of the United States

SOUTHERN UNION COMPANY,

Petitioner,

v.

JAMES M. IRVIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ERIC D. HERSCHMANN*
DANIEL R. BENSON
MICHAEL M. FAY
DANIELA RAZ
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP
1633 Broadway
New York, NY 10019
(212) 506-1700

CHRISTINA CARLSON DODDS
BISHOP LONDON BROPHY DODDS, PC
106 E 6th St, Suite 700
Austin, TX 78701
(512) 479-5900

TOM Q. FERGUSON
DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.
320 South Boston Avenue
Suite 500
Tulsa, OK 74103
(918) 582-1211

* *Counsel of Record*

Counsel for Petitioner

198217

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether the Ninth Circuit lacked the authority to depart from what it acknowledged was the literal reading of Fed. R. Civ. P. 4 to hold that the time to file a notice of appeal runs, not from the entry of an order disposing of the last remaining motion enumerated in Rule 4(a)(4)(A), but from the later entry of a final judgment.

2. If the answer to the first question is in the negative, whether the Ninth Circuit misapplied this Court's decisions in vacating a punitive damages award against a public official based on his corrupt abuse of his quasi-judicial office and on his later efforts to destroy and fabricate evidence, where the punitive award was 154 times compensatory damages but only one-half of the actual harm the public official knew would result from his misconduct.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Southern Union Company has no parent corporation and no publicly held company owns 10% or more of its stock.

Respondent James M. Irvin was the only defendant who was party to the appeal below in the Ninth Circuit. The other defendants, who settled with petitioner and were not parties to the appeal below, were Southwest Gas Corporation, ONEOK Inc., Michael Maffie, Thomas Hartley, Gene Dubay, Thomas Sheets, John Gaberino, Jack D. Rose, Edward Zub, and Larry W. Brummett.

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Petitioner Southern Union Company ("Southern Union") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the Ninth Circuit sought to be reviewed is reported at 415 F.3d 1001 (9th Cir. 2005) (1a - 31a). The Ninth Circuit denied rehearing and rehearing en banc and amended its first opinion on other grounds in an order reported at 423 F.3d 1117 (9th Cir. 2005) (89a - 91a). The opinions of the District Court denying respondent James M. Irvin's post-trial motions are reported at 281 F. Supp. 2d 1090 (D. Ariz. 2003) (34a - 67a) and 281 F. Supp. 2d 1117 (D. Ariz. 2003) (70a - 88a).

STATEMENT OF JURISDICTION

The judgment of the Ninth Circuit was entered on July 13, 2005. A timely petition for rehearing and rehearing en banc was denied on September 16, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RULES INVOLVED

Rule 2 of the Federal Rules of Appellate Procedure provides:

> On its own or a party's motion, a court of appeals may—to expedite its decision or for other good cause—suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b).

Rule 4 of the Federal Rules of Appellate Procedure provides:

> *(a) Appeal in a Civil Case.*
>
> *(1) Time for Filing a Notice of Appeal.*
>
> *(A)* In a civil case, except as provided in Rules 4(a)(1)(B),4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered. . . .
>
> *(4) Effect of a Motion on a Notice of Appeal.*
>
> *(A)* If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:
>
> *(i)* for judgment under Rule 50(b); [or]
>
> . . .
>
> *(v)* for a new trial under Rule 59 . . . .